

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harry Feigen	Team: APU	CCRB Case #: 201704630	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/08/2017 11:20 AM	Location of Incident: Joralemon Street between Court Street and Boerum Place	Precinct: 84	18 Mo. SOL 12/8/2018	EO SOL 12/8/2018	
Date/Time CV Reported Fri, 06/09/2017 3:51 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/09/2017 3:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Duane Percy	351	944884	GANG BN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Julius Hudson	20692	918232	084 PCT
2. POM John Kenny	31539	904261	084 PCT
3. POF Diana Torres	09111	929048	084 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Duane Percy	Abuse: Det. Duane Percy stopped § 87(2)(b)	
B.DT3 Duane Percy	Force: Det. Duane Percy used physical force against § 87(2)(b)	
C.DT3 Duane Percy	Abuse: Det. Duane Percy searched § 87(2)(b)	
D.DT3 Duane Percy	Discourtesy: Det. Duane Percy spoke discourteously to § 87(2)(b)	

Case Summary

On June 9, 2017, § 87(2)(b) filed this complaint with the CCRB by phone. On June 14, 2017, a duplicate of the case was received from IAB under IAB log number 17-21743.

On June 8, 2017, at approximately 11:20 a.m., § 87(2)(b) left the Kings County Family Courthouse located at 320 Jay Street in Brooklyn, after attending a court hearing. As she was exiting the courthouse, § 87(2)(b) walked past Det. Duane Percy of the Brooklyn North Gangs Squad. Det. Percy followed § 87(2)(b) out of the courthouse, and began walking behind § 87(2)(b) as she walked through a parking lot to Adams Street. Det. Percy called to § 87(2)(b) and asked what her name was, and § 87(2)(b) asked why he wanted to know that. She told him to go back to the courthouse to obtain her name if he really wanted to. § 87(2)(b) then continued walking on the sidewalk, and Det. Percy walked behind her, and continued to ask for her name, and also asked to see her ID. § 87(2)(b) responded to Det. Percy by asking why he needed to know her name, and also told the detective that she did not have any open warrants.

At the intersection of Adams Street and Joralemon Street, § 87(2)(b) tried to enter a taxicab, but the driver told her that he was waiting for a passenger. § 87(2)(b) then crossed the street, and walked west on Joralemon Street. She got onto a B38 bus that was at a bus stop on that block. Det. Percy followed § 87(2)(b) and when she entered the bus, he showed his police shield to the bus operator, and asked that she not drive away. Det. Percy asked § 87(2)(b) for her name again, and she told him that her name was § 87(2)(b) and asked again what he wanted with her. § 87(2)(b) tried to walk off the bus and walk around Det. Percy, at which time Det. Percy grabbed her arm (**Allegation A**). A marked police vehicle had pulled in front of the bus, and Det. Percy walked § 87(2)(b) to the front of this vehicle, and pushed her forward so her face was against the hood of the car.

PO John Kenny, PO Julius Hudson, and PO Diana Torres, all of the 84th Precinct, exited the police vehicle, and assisted with holding § 87(2)(b). These officers asked what was happening, and § 87(2)(b) replied that she did not know. She provided her name, stated she had just come from court, and that she did not know why Det. Percy was following her. Det. Percy placed § 87(2)(b) in handcuffs and continued to hold her over the hood of the car (**Allegation B**).

§ 87(2)(b) told the officers to go in her purse and retrieve her ID. Det. Percy reached in § 87(2)(b)'s bag and removed some papers, and began reading them (**Allegation C**). § 87(2)(b) asked Det. Percy why he was reading her personal information. Det. Percy then removed § 87(2)(b)'s ID from her wallet. After reviewing the ID and speaking to someone on his phone, Det. Percy stated that it was a case of mistaken identity, and removed § 87(2)(b)'s handcuffs. § 87(2)(b) asked Det. Percy for a pen so she could write down his name and shield number, and Det. Percy responded, "You don't need a fucking pen, there's a pen in your bag" (**Allegation D**).

§ 87(2)(b) retrieved a pen from her bag and wrote down Det. Percy's name and shield number. Det. Percy walked away from the scene, and the other officers drove § 87(2)(b) to her residence in Brooklyn. § 87(2)(b) was not issued any summonses or arrested.

Shortly after arriving home, § 87(2)(b) was experiencing pain to her left wrist, back, and her right ear from Det. Percy pushing her onto the hood of the police vehicle and placing her in handcuffs. She called an ambulance and was taken to § 87(2)(b) Hospital, where she was given diazepam, tramadol, and ibuprofen.

Det. Percy prepared a stop-and-frisk report in regards to the stop (01 Board Review).

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation.
- § 87(2)(b)'s attorney filed a notice of claim regarding this incident. The claim alleges that § 87(2)(b) was illegally stopped, and that the officer involved twisted her arm and pushed her down against a police vehicle. (02 Board Review).

- § 87(2)(b)
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
- Det. Percy has been a member of service for ten years. There are no substantiated allegations on his record. He has five previous physical force allegations, across five cases. Three have been closed as exonerated, one as unsubstantiated, and one as complainant uncooperative.

Findings and Recommendations

Allegation A: Abuse of Authority – Det. Duane Percy stopped § 87(2)(b)

The following facts are undisputed. § 87(2)(b) walked out of the Kings County Supreme Court at 320 Jay Street at approximately 11:20 a.m. on June 8, 2017, and walked past Det. Percy, who was standing in front of the courthouse. Det. Percy walked behind § 87(2)(b) for approximately one block, and then asked § 87(2)(b) for her name and ID, and told her that he wanted to speak with her for a few minutes. § 87(2)(b) asked why he wanted her name and ID, and stated that she did not have to speak with him, and continued walking. Det. Percy continued walking behind § 87(2)(b) and asked repeatedly for her name, and for her to stop. Det. Percy followed § 87(2)(b) for approximately two blocks in this manner, and § 87(2)(b)

crossed the street and boarded a bus that was stopped on Joralemon Street between Adams Street and Court Street. Det. Percy approached the bus and told the operator that he was a police officer, and not to drive away. Det. Percy told § 87(2)(b) to exit the bus, which she did. § 87(2)(b) attempted to walk around Det. Percy as she exited the bus, at which time he grabbed her arm. Three unidentified officers in a vehicle parked on the street nearby assisted Det. Percy in placing § 87(2)(b) on the hood of their vehicle, and placing her in handcuffs.

Det. Percy's sole reason for stopping § 87(2)(b) was that he believed she was § 87(2)(b), a woman that Det. Percy arrested on § 87(2)(b), for criminal possession of a controlled substance (06 Board Review). Det. Percy stated that § 87(2)(b) was an "outstanding case subject" and a wanted fugitive for a narcotics investigation who was supposed to turn herself in at the § 87(2)(b) on § 87(2)(b). Det. Percy denied that he had an arrest warrant for § 87(2)(b) at the time of this incident. He stated that there may have been an active I-Card for her pertaining to an unrelated case, but he was not certain of this. Det. Percy did not know a specific time that § 87(2)(b) was supposed to appear at the courthouse. Det. Percy had only interacted with § 87(2)(b) one time prior to this incident, on the date of her arrest in § 87(2)(b). Det. Percy stated he § 87(2)(b) arrest photograph with him during this incident, and that as he walked behind § 87(2)(b) he checked the photograph of § 87(2)(b) several times to compare her to § 87(2)(b) (07 Board Review).

§ 87(2)(b) is a § 87(2)(b) with § 87(2)(b), and was § 87(2)(b)-old on the date of this incident (08 Board Review). § 87(2)(b) is a § 87(2)(b) with § 87(2)(b), and was § 87(2)(b)-old on the date of this incident (09 Board Review).

According to an OCA search for § 87(2)(b) criminal case, she had a court date on § 87(2)(b) relating to her criminal case stemming from her arrest on § 87(2)(b). § 87(2)(b) did not appear for this court date, and a bench warrant was issued for her arrest as a result (10 Board Review). According to § 87(2)(b) DAS-lite snapshot, there were no I-Cards, warrants, or UF-61s active for § 87(2)(b) on the date of this incident, other than the bench warrant that was issued following her failure to appear in court (11 Board Review).

In order to stop an individual, an officer must have reasonable suspicion that the person is committing or about to commit a crime. People v. De Bour, 40 N.Y.2d (1976) (12 Board Review).

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)

Allegation B: Force – Det. Duane Percy used physical force against § 87(2)(b)

§ 87(2)(b) stated that as she exited the bus at Joralemon Street, she attempted to walk around Det. Percy, and Det. Percy grabbed her arm. Det. Percy then walked her over to a police vehicle that had stopped in front of the bus, and pushed her over the hood of the vehicle. § 87(2)(b) attempted to lift her torso off the hood of the car, and Det. Percy pushed her back down against the hood. Det. Percy then placed § 87(2)(b) in handcuffs, and continued holding her against the vehicle. After reviewing § 87(2)(b)'s ID, § 87(2)(b) was released from handcuffs. § 87(2)(b) later had pain to her back, left wrist, and right ear from being pushed into the hood of the car, and from being placed in handcuffs. She went to § 87(2)(b) Hospital later in the day after this incident in regards to this pain (13 Board Review).

Det. Percy stated that after § 87(2)(b) exited the bus, she continued walking away from him. Det. Percy then asked for the three plainclothes officers in a nearby vehicle to assist him with stopping § 87(2)(b). One of these officers walked in front of § 87(2)(b) at which time § 87(2)(b) turned around, and started walking towards Det. Percy, and was yelling and had her hands raised. This caused Det. Percy to fear for his safety, so he placed § 87(2)(b) in handcuffs. He held § 87(2)(b) against the side of the police vehicle or over the hood, he could not recall which, but he denied that he pushed her down into the hood as § 87(2)(b) alleged. In Det. Percy's TRI report prepared for this incident, he only mentions that § 87(2)(b) tensed her arms

after he grabbed her, and does not state that she advanced at him with her arms raised, or provide any other reason for placing § 87(2)(b) in handcuffs (14 Board Review).

PO Torres could not describe how Det. Percy placed § 87(2)(b) in handcuffs. She did not recall § 87(2)(b) providing any physical resistance to Det. Percy, including walking away, walking towards Det. Percy with her arms raised, or tensing her arms. PO Torres did not recall § 87(2)(b) behaving aggressively towards Det. Percy in any way. PO Torres did not recall if Det. Percy leaned § 87(2)(b) against the officers' vehicle while placing her in handcuffs (15 Board Review).

PO Kenny stated that Det. Percy leaned § 87(2)(b) against the officers' vehicle and placed her in handcuffs. He did not see Det. Percy push § 87(2)(b) down onto the hood of the vehicle, however, nor did he observe Det. Percy use any other force against § 87(2)(b). He stated § 87(2)(b) was refusing to place her hands behind her back, but otherwise did not resist physically in any manner. PO Kenny did not see § 87(2)(b) walking towards Det. Percy with her arms raised (16 Board Review).

PO Hudson could not describe what actions Det. Percy specifically took to place § 87(2)(b) in handcuffs. He could not recall whether Det. Percy ever pushed § 87(2)(b) against the officers' vehicle. He denied seeing § 87(2)(b) resist Det. Percy physically. He did not see § 87(2)(b) walk towards Det. Percy with her arms raised, nor did he see § 87(2)(b) act aggressively towards Det. Percy during this incident (17 Board Review).

All of the officers denied that § 87(2)(b) complained of any injuries or pain after being released from handcuffs.

According to § 87(2)(b)'s medical records from § 87(2)(b) Hospital, she complained to medical personnel of back pain and left arm pain, due to being assaulted by the police. She was prescribed diazepam, ibuprofen, and tramadol for the pain (18 Board Review). In her Ambulance Call Report, § 87(2)(b) reported that she had pain in her left wrist and back, due to being grabbed by an officer, thrown onto a police car, and pinned against the car (19 Board Review).

§ 87(2)(b), § 87(2)(g)

According to Patrol Guide Procedure 221-01, an officer's use of physical force must be objectively reasonable given the totality of the circumstances known to the officer at the time of the use of force. In determining whether an officer should use force against a person, he or she should consider the nature and severity of the crime he suspects the person of, the actions taken by the person, the immediacy of the perceived threat from the person, whether the person is

actively resisting arrest, the number of subjects in comparison to number of officers, the size, age, and condition of the person in comparison to the officer, and the person's violent history, if known (20 Board Review).

§ 87(2)(b), § 87(2)(g)

Allegation C: Abuse of Authority – Det. Duane Percy searched § 87(2)(b)

§ 87(2)(b) alleged that after Det. Percy placed her in handcuffs, she told the officers to go in her purse and retrieve her ID. Det. Percy then picked up § 87(2)(b)'s purse and removed several papers from it, and began reading through them. § 87(2)(b) asked Det. Percy why he was reading through her personal information. Det. Percy then retrieved § 87(2)(b)'s wallet from the purse and removed her ID.

Det. Percy stated that after § 87(2)(b) told him to get her ID from her purse, he opened the bag, observed § 87(2)(b)'s ID sitting at the top of the bag, and removed it. He denied removing any papers, or any other items from the bag.

PO Kenny, PO Hudson, and PO Torres all either denied or did not recall seeing Det. Percy remove any items from § 87(2)(b)'s purse other than her ID, and they all denied or did not recall seeing Det. Percy holding or reading through any of § 87(2)(b)'s personal papers.

§ 87(2)(b), § 87(2)(g)

Allegation D: Discourtesy – Det. Duane Percy spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after she was released from handcuffs, she asked Det. Percy for a pen so that she could write down his name and shield number. Det. Percy allegedly responded, “You don’t need a fucking pen, there’s a pen in your bag.” In § 87(2)(b)’s initial phone statement, she alleged that Det. Percy responded to her request for a pen by saying, “You don’t need my shit, you have one in your bag” (17 Board Review). In § 87(2)(b)’s in-person statement, she denied that Det. Percy stated “You don’t need my shit,” and reaffirmed that his statement at this time was, “You don’t need a fucking pen.” § 87(2)(b) eventually obtained Det. Percy’s name and shield number from one of the unidentified officers, who wrote them down for § 87(2)(b).

Det. Percy stated that he provided his name and shield number to § 87(2)(b) verbally at the end of this stop. Det. Percy did not recall § 87(2)(b) asking for a pen to write his name and shield number down. Det. Percy denied stating, “You don’t need a fucking pen,” or any similar statements. He denied using any profanity towards § 87(2)(b) during this incident.

PO Hudson, PO Kenny, and PO Torres all did not recall Det. Percy telling § 87(2)(b) “You don’t need a fucking pen.” None of these officers could recall Det. Percy using any profanity towards § 87(2)(b) during the incident.

§ 87(2)(b), § 87(2)(g)

Squad: 13

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date